



NATIONAL SCIENCE FOUNDATION

45 CFR Part 613

RIN 3145-AA66

Social Security Number Fraud Prevention Act of 2017 Implementation

AGENCY: National Science Foundation (NSF).

ACTION: Final rule; request for comments.

SUMMARY: NSF is adding a section to its Privacy Act regulations to implement restrictions on the use of Social Security numbers in documents mailed by NSF. These restrictions are required by the Social Security Number Fraud Prevention Act of 2017. The rule is intended to help reduce the potential risk of identity theft from fraudulent or other unauthorized acquisition of Social Security numbers from any NSF mailings.

DATES: The rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments, if any, are requested by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*.]

ADDRESSES: Submit comments, if any, through the Federal e-rulemaking portal, <https://www.regulations.gov>. In the body of your comment, please indicate that it is in response to “RIN 3145-AA66–Social Security Number Fraud Prevention Act of 2017 Implementation.” If you are unable to submit your comment through the portal, please see the **FOR FURTHER INFORMATION CONTACT** section of this document to obtain alternate submission instructions. Comments may be made publicly available for routine viewing, inspection, and copying on <https://www.regulations.gov> and/or on the NSF website, <https://www.nsf.gov>, and are subject to disclosure under NSF's Freedom of

Information Act regulations at 45 CFR part 612. For this reason, do not include in your comment information of a confidential nature, such as sensitive personal information or proprietary information, or any other information that you would not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Assistant General Counsel, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, (703) 292-8547.

SUPPLEMENTARY INFORMATION: The Social Security Number Fraud Prevention Act of 2017, Pub. L. 115–59, 131 Stat. 1152 (Sept. 15, 2017), codified at 42 U.S.C. 405 note, restricts federal agencies from including Social Security numbers (SSNs) of individuals on documents sent by mail unless the head of the agency determines that including the SSN on the mailing is necessary. The Act requires agency heads to issue regulations, within five years of the Act, specifying the circumstances under which including an SSN on a document sent by mail is necessary. The Act requires that the regulations include instructions for the partial redaction of SSNs where feasible, and requires that SSNs not be visible on the outside of any package sent by mail.

To implement these requirements, NSF is amending its existing Privacy Act regulations (45 CFR part 613) to add a new § 613.7, and to make a conforming amendment to § 613.1, which describes the scope of part 613, to accommodate the new rule. The rule prohibits including an individual’s SSN on any document that NSF sends by mail unless it is necessary, as determined by the Director of NSF (or other agency official whom the Director may designate). If so, the rule requires that the SSN be truncated to display no more than the last four digits or, if such truncation is not feasible, the document may include additional SSN digits or the full SSN, as needed, but only under certain circumstances, i.e.: if required by law (e.g., statute, court order, or other legal mandate);

to identify a specific individual where no adequate substitute is available; or to fulfill some other compelling NSF business need. In all cases, the rule prohibits any SSN, truncated or not, from being visible on the outside of any NSF mailing.

Consistent with the language of the Act, and with the legislative intent and examples discussed in the House report (H.R. Rep. No. 115-150, pt. 1) accompanying the Act, the rule is limited to printed documents or correspondence mailed by NSF, including printed documents or correspondence mailed by a contractor acting on NSF's behalf. The rule does not apply to e-mails or other documents, correspondence, or communications transmitted by electronic means (e.g., via web portals). The rule is also not intended to apply to mailings, if any, by NSF award recipients or other individuals or entities using financial or other support or assistance from NSF, as their award terms and conditions do not normally direct or authorize them to send mailings or otherwise take any actions on NSF's behalf.

Administrative Procedure Act

This rule of agency organization, procedure, or practice is exempt from the prior public notice and comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(A). Accordingly, it is not being published in proposed form before being published as final and effective. There is also no need to delay the effective date of the rule by 30 days, as normally required for substantive rules. See 5 U.S.C. 553(d). Instead, there is good cause to make the rule effective immediately, as it is merely procedural and reflects a statutory requirement that is already in effect (i.e., documents mailed by the agency may not include an SSN unless the agency head determines it is necessary). *Id.* Nonetheless, NSF will accept comments, if any, on the rule from interested parties, as provided in the **ADDRESSES** section of this document. NSF will consider such

comments, if any, and may modify the rule on the basis of such comments, or as the agency may otherwise deem necessary or appropriate.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is not a significant regulatory action subject to review by the Office of Management & Budget (OMB), Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, section 6(a).

Executive Order 13132

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have any federalism implications, as described above.

Regulatory Flexibility Act

NSF hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is that the rule governs only the circumstances under which NSF includes SSNs in documents mailed by the NSF. The

rule does not apply to mailings by small entities, other than any contractors who may be engaged to send mailings on NSF's behalf. Even in those cases, the economic impact would fall on NSF, not on the contractor, to determine to what extent, if any, a mailing needs to include an SSN in whole or part, and to pay mailing costs. In any event, NSF does not expect the volume of such mailings, if any, to be significant. Accordingly, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement analyzing and estimating anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. See 2 U.S.C. 1532. The Act further requires that the agency publish a summary of such statement with the agency's proposed and final rules. No statement or summary is required, since the rule will not result in the above-stated expenditure by State, local, and tribal governments, or by the private sector.

Section 1 of Executive Order 12785 requires the agency to submit a description of the extent of its prior consultation with representatives of affected State, local, and tribal governments, together with the agency's position, to OMB to support the need for any regulation that is not required by statute, if the direct compliance costs incurred by such governments will not be funded by the Federal Government (i.e., an unfunded mandate). The Executive order does not apply, since the rule is required by statute and, in any event, imposes no mandate or compliance obligations, unfunded or otherwise, on any State, local, or tribal government.

Congressional Review Act

A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This rule is not a major rule under 5 U.S.C. 801.

Paperwork Reduction Act

This rule contains no information collection, recordkeeping, or disclosure provisions that would constitute information collection activities subject to the OMB clearance requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

List of Subjects in 45 CFR Part 613

Personally identifiable information, Privacy, Social security.

For the reasons stated in the preamble, NSF amends part 613, title 45 of the Code of Federal Regulations, as set forth below:

PART 613 - PRIVACY ACT REGULATIONS

1. Revise the authority citation for part 613 to read as follows:

Authority: 5 U.S.C. 552a; for § 613.7, 42 U.S.C. 405 note, Pub L. 115–59, 131 Stat. 1152.

2. In § 613.1, add a sentence at the end to read as follows:

§ 613.1 General Provisions.

* * * This part also includes regulations required by the Social Security Fraud Prevention Act of 2017 to limit the use of Social Security numbers on documents mailed by the National Science Foundation (NSF or Foundation).

3. Add § 613.7 to read as follows:

§ 613.7 Social Security numbers on documents mailed by NSF.

(a) A document that NSF sends by mail shall not include the Social Security number (SSN) of an individual, except where the NSF Director (or other agency official whom the NSF Director may designate) determines that it is necessary. If so, the SSN must be truncated to the extent feasible, as follows—

(1) The document shall include no more than the last four digits of the SSN; or

(2) If the document needs to include more digits, then only where they are:

(i) Required by law (including, but not limited to, a statute, court order, or other legal mandate);

(ii) Needed to identify a specific individual when no adequate substitute is available; or

(iii) Needed to fulfill some other compelling NSF business need.

(b) No portion of an SSN may be visible on the outside of any NSF mailing.

(c) For purposes of this section, “mail” and “mailing” means printed documents or correspondence, and does not include e-mails or any other documents, correspondence, or communications in electronic form.

(d) The requirements of this section shall apply to mail sent by NSF, including mailings by a contractor on NSF’s behalf, on or after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Dated: October 17, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer,

National Science Foundation.

